

HISTORY OF LEGISLATION PROHIBITING ALIENS FROM RADIO BROADCASTING IN THE UNITED STATES

The regulation of radio broadcasting is within the plenary power of Congress.¹ The first Act of Congress which involved radio transmission was enacted in 1910 and since that time Congress has passed a number of Acts to control radio broadcasting for the purpose of safeguarding the public interest. It has been held that governmental control does not conflict with constitutional provisions; "free speech" does not include the right to use radio facilities without a license.²

Presently the Federal Communication Commission is Congress' administrative agent to aid in carrying out the objectives of the Federal Communications Act of 1934 including the allocation and regulation of use of radio frequencies by prohibiting such use except under license.³ To qualify for a license, a radio broadcasting station must show that it will operate in the public interest and be a trustee for the public.⁴ Radio broadcasting is subject to the provisions of the Federal Communications Act of 1934 as amended (Title 47 USC 151-609); section 301 of which states the purpose of the chapter among other things is "to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof." The Act specifies that a license is necessary for the operation or use of "any apparatus for the transmission of energy or communications or signals by radio."⁵ The Federal Communication Commission conducts hearings on applications for licenses to broadcast. A denial of a hearing granted by statute is usually construed as a denial of due process of law. However, there are occasions when the Federal Communication Commission may reject an application without a hearing.

Aliens: If an applicant admits he is an alien, his application will be denied without a hearing⁶ because he is disqualified by Section 310(a) of the Act which states:

"(a) The station license required hereby shall not be granted to or held by--

- (1) Any alien or the representative of any alien;
- (2) Any foreign government or the representative thereof;
- (3) Any corporation organized under the laws of any foreign government;

1. WOND Inc. v. FCC, 1945, 153 F 2d 623 at 628.
2. National Broadcasting Co. v. U.S., 1943, 319 US 190 at 474.
3. FCC v. Sanders Bros. Radio Station, 1940, 309 US 470; 48 Stat. 1064, 47 USC Sec. 151 et seq.
4. McIntire v. Wm. Penn Broadcasting Co., 1945, 151 F 2d 997; cert. denied 327 US 779.
5. Sec. 301.
6. Dicta from Storer Broadcasting Co. v. U.S., 1955, 220 F 2d 204.

(4) Any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(5) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted, after June 1, 1935, by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or the revocation of such license."

If an applicant denies he is an alien or otherwise is disqualified under any other provision of Section 310(a) but is found to be such after a hearing conducted on that issue, his application will be dismissed without further hearing.

History of 310(a): The first comprehensive statute for control of radio broadcasting was the Radio Act of 1912.⁷ It required that a license be obtained from the Secretary of Commerce and Labor before a person, company, or corporation within the jurisdiction of the United States could "use or operate any apparatus for radio communication as a means of commercial intercourse among the several states, or with foreign nations."

Section 2 of the Act was more specific in that it gave to the Secretary of Commerce and Labor authority to issue licenses in such form as he "shall determine and shall contain the restrictions, pursuant to this Act, on and subject to which this license is granted." The first restriction on the issuance was then set out; "that every such license shall be issued only to citizens of the United States or Porto Rico or to a company incorporated under the laws of some state or territory or the United States or Porto Rico or to a company incorporated under the laws of some State or Territory or of the United States or Porto Rico, and shall specify the ownership and location of the station."

Shortly after the passage of the Act a New York corporation, either a subsidiary of or owned by alien interests applied for a license to operate a wireless telegraph station in New York.⁸ The Attorney General advised the Secretary of Commerce and Labor that the latter had no discretion to deny the application.⁹ The Attorney General's opinion was based on the fact that the 1912 Act did not exclude domestic corporations whose stock was owned or controlled by foreigners. The requirement of Section 2 of the Act was met in that case even though the stock was owned by German interests. Apparently there was some pressure to withhold the license until the German government would guarantee the right of

7. 37 Stat. 302.

8. Warner, Radio and Television Law; p 544.

9. 29 Op. Atty Gen. 579.

Americans investing in and controlling corporations organized under German laws to operate coast stations in Germany for transatlantic radio communication.¹⁰

The wording of Section 2 of the 1912 Act failed to prevent foreign ownership of radio companies operating within the United States. The dangers of foreign ownership of American radio companies was forcibly brought out prior to and during World War I.¹¹ Secretary of the Navy Daniels, at that time, recommended Government ownership of all radio in order to forestall the threat of foreign domination of radio broadcasting in the United States. In the post World War I period, Congress did not approve this suggestion, but in lieu thereof considered legislation requiring private ownership and operation, with positive assurance that radio would be owned by United States citizens, that directors and officers of radio companies would be United States citizens and that four-fifths of the stock would be in the hands of United States citizens.¹²

While the weakness in the Radio Act of 1912, which allowed alien control of a broadcasting station, undoubtedly disturbed many Congressmen who believed that broadcasting ought to be limited to citizens of the United States only, there was insufficient demand to amend the 1912 Act until the rapid expansion of radio broadcasting in the 1920's generally outgrew the controls of the Act. Congress soon recognized that radio broadcasting had become of major importance to the country, and in 1923, Representative White introduced a bill which was a serious effort to rectify the shortcomings of the 1912 Act. Section 2 of this bill prohibited the granting of a license to aliens and defined an alien with particularity. Succeeding bills also made it clear that Congress wished to reaffirm that the use of the ether for radio communication was "the inalienable possession of the people of the United States and their Government." As a result of efforts, extending over several years, by the Secretary of Commerce and members of Congress, the Radio Act of 1927 was passed.¹³

In the Act, Congress provided for more elaborate restrictions and controls on alien ownership of radio stations. The question of foreign ownership was inextricably intertwined with such questions as monopoly, costs, foreign commerce and national defense. Congress was impressed by a strong argument in favor of eliminating foreign ownership, probably presented by the military, which explained the dangers from espionage and propaganda disseminated through foreign-owned radio stations in the United States prior and during World War I.¹⁴ In 1927, Congress was

10. Ibid.

11. Excerpt from statement of Secretary of the Navy to Committee on Interstate and Foreign Commerce, 22 December 1932. Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives on H.R. 8301; 10 April 1934, p 53.

12. Testimony of Capt. S.C. Hooper, Chief of Naval Communications, before the House Committee, p 23.

13. 44 Stat. 1162.

14. Op. cit. supra 11.

sympathetic to this possibility and went to great lengths in enacting Section 12 of the Radio Act of 1927, to prevent foreign influence from entering the United States communications system.¹⁵

Section 12 of the Act specified that licenses would not be granted to nor transferred to:

- (a) any alien or the representative of any alien;
- (b) any foreign government, or the representative thereof;
- (c) any company, corporation, or association organized under the laws of any foreign government;
- (d) any company, corporation or association of which any officer or director is an alien, or of which more than one-fifth of the capital stock may be voted by aliens or their representatives or by a foreign government or representative thereof, or by any company, corporation, or association organized under the laws of a foreign country."

Shortly after President Roosevelt took office he recommended that Congress revise the communications laws. Committees in both Houses began hearings and the alien ownership provision again came up for discussion. It was pointed out that even the 1927 Act had a loophole which permitted a foreign dominated holding company to own a United States communication company and it was suggested by the War and Navy Departments that Section 12 of the 1927 Act be strengthened.^{16 17} In his testimony before the Senate committee, Captain Hooper, Chief of Naval Communications stated:

"All we ask as a substitute for government ownership are words which legally mean what the ownership of radio was intended to mean, so that our own companies will meet the requirements of national defense, so that their personnel can be in our reserve, drill in peace for war, and can shift promptly from peace to war status when required"¹⁸

It was obvious, from its testimony, that the Navy was concerned only with commercial communications being controlled by aliens. Apparently no discussions were carried on which concerned ownership by foreign governments of non-commercial broadcasts. In January of 1934, the Joint Board of the Army and Navy issued a policy paper to govern the Army and Navy "in all communications questions which are of a commercial nature affecting the national defense." The paper recommended that "all commercial communications facilities in the United States and its possessions . . . should be owned . . . and operated exclusively by citizens of the United States." Exceptions were made which took into account corporations in which stock was owned by aliens.¹⁹

- 15. Study of Communications by an Interdepartmental Committee, 23 January 1934, p 6.
- 16. Ibid.
- 17. Hearings before Committee on Interstate Commission on S. 2910, U.S. Senate, 73rd Congress, 2d Session on p 123.
- 18. Ibid; p 24.
- 19. Report of the Army and Navy Joint Board; 19 January 1934; JB No. 319.

During the hearings on control over foreign communications companies, Senator Dill, the Chairman of the Senate Committee, remarked that "Some of us had to fight to keep this from becoming more stringent." Senator White commented "It looks to me as though this section 310 was nationalism run wild."²⁰

It was brought out at the hearings several times that "the great nations of the world fully realized the tremendous importance, both to commerce and national defense" of government ownership and control of commercial radio systems. In this context Section 310(a)(2) could be interpreted to prevent foreign government commercial radio systems from operating within the United States. From a study of the various hearing reports, it appears that Section 310(a) of the 1934 Act, which incorporated Section 12 of the 1927 Act, was, as was the case with the 1927 Act, included mainly for national defense reasons at the insistence of the Army and the Navy. It is interesting to note that at the end of Section 310(a)(5) Congress gave the Commission discretion in deciding whether "the public interest will be served by refusal or revocation" of a license to a corporation organized as prescribed.

Summary: The legislative prohibitions embodied in Section 310(a) of the Federal Communications Act can be traced to the first comprehensive federal legislation in the radio broadcasting field, the Radio Act of 1912. Through the years of radio infancy, Congress was determined to safeguard the recognized importance of this method of communication from foreign domination. In the period of rapid growth of commercial radio, foreign interests were actively investing in large corporations with world-wide holdings. To assure United States citizens including corporations a field in which to grow competitively, Congress provided the U.S. industry protection so that it could expand in its own backyard.

World War I emphasized the military, espionage, and propaganda possibilities of alien-controlled radio. Congress in 1927 passed the Radio Act which included the stringent prohibitions on alien broadcasting. There is evidence to show that by 1934 U.S. commercial radio had grown enough to suggest, at least to some Senators, that it could take care of itself competitively. However, the military was still alarmed over the defense implications of foreign-controlled commercial broadcasting. As a result the provisions of the 1927 Act prohibiting aliens from broadcasting were incorporated into the 1934 Act, apparently without opposition.

Conclusions: In determining the steps to be taken to allow an alien to broadcast from the United States the following points should be included:

1. Section 606(c) of the Act gives the President power, in the interest of national security, to suspend or amend rules and regulations applicable to all stations and devices. He may also close stations which are suitable for use as navigational aids. This power has been delegated to OCM.

20. Ibid footnote 17.

2. The "public interest", a much bandied about term in the history of this Act, may be served in certain cases by an alien-controlled broadcasting station.
3. The Army and Navy were opposed to alien-controlled commercial broadcasting; they made no reference to non-commercial broadcasting.
4. The United States today is a world leader in radio broadcasting and the rationale of fear of competition is not as applicable as it was in the 1920's.
5. The alien provisions of the Acts of 1912, 1927 or 1934 appear to have evoked comparatively little interest in committee and on the floor of either House.